

Kasell Law Firm

February 11, 2025

via CM/ECF

Magistrate Judge James M. Wicks
United States District Court
Eastern District of New York
100 Federal Plaza, Courtroom 1020
Central Islip, New York 11722

Re: *Atipana Credit Opportunity Fund I, LP d/b/a Fundr v. Pro Source Services et al.*, No. 25 Civ. 00200 (E.D.N.Y. 2025) (JMM)

Judge Wicks:

I am counsel for Defendants, who removed this case from state court on January 13, 2025, on the basis of diversity jurisdiction. Last week, the following docket entry was made: “Pursuant to the Electronic Order dated January 29, 2025, Defendants were directed to file an Amended Notice of Removal on or before February 5, 2025, which they have failed to do. Accordingly, Defendants shall file their Amended Notice of Removal on or before February 12, 2025.”

I write for two reasons. *First*, I apologize to the Court for failing to comply with the Electronic Order. This was one of the rare occasions in which I did not see the Court’s Order in my inbox. I am aware of my independent obligation to monitor my email and have taken steps to ensure this does not happen again. Thankfully, this is the first time in years that I have encountered such an issue.

Second, I respectfully request an additional two weeks to file the Amended Notice of Removal because there is a question as to whether Plaintiff may, in fact, be a Florida entity. If that is the case, diversity jurisdiction would not exist, as my clients are also Florida citizens. Plaintiff’s complaint states: “Atipana Credit Opportunity Fund I, LP DBA Fundr (‘Fundr’) is an entity organized and existing under the laws of the State of New York and maintains its principal place of business at 43 W 23rd St, New York, NY 10010.”

However, a search of the New York Secretary of State’s website shows no such entity formed under the laws of New York or even registered in the state ([<https://apps.dos.ny.gov/publicInquiry/>])(<https://apps.dos.ny.gov/publicInquiry/>)). The Secretary of State does list “Atipana Capital, LLC,” but it is registered as a foreign entity based in Florida.

Kasell Law Firm

More importantly, a search of the SEC's EDGAR (Electronic Data Gathering, Analysis, and Retrieval) system reveals documents apparently filed by Plaintiff under CIK (Central Index Key) number 0001796170. According to these documents, Atipana Credit Opportunity Fund I, LP is a limited partnership formed under the laws of Delaware with a business and mailing address at 25 SE 2nd Ave, Suite 550 PMB 79, Miami, FL 33131.

Rather than filing an Amended Notice of Removal only to later discover that this Court lacks subject matter jurisdiction, I would like the opportunity to discuss this issue with Plaintiff's counsel. Additionally, I need time to research whether diversity jurisdiction may be maintained for a limited partnership (as opposed to a corporation or LLC) formed under Delaware law but with its principal place of business in Florida.

Accordingly, I request an additional two weeks to determine whether this Court has jurisdiction. I note that when I filed the Notice of Removal, I relied on Plaintiff's own allegation that it was an entity formed under the laws of New York—an assertion that, at this moment, appears to be incorrect.

Respectfully,

/s/ David Kasell

David Kasell

Counsel for Defendants